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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/870,127   | 05/29/2001  | Adnan Asar           | KEYNP007            | 6508             |
| 26541  | 7590        | 09/13/2006           | EXAMINER            |                  |
| Cindy S. Kaplan<br>P.O. BOX 2448<br>SARATOGA, CA 95070 |             |                      | PWU, JEFFREY C      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2143                |                  |

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/870,127

Applicant(s)

ASAR ET AL.

Examiner

Jeffrey C. Pwu

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/15/06 Amendment.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-31 and 34-63 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 21-27, 36-39 and 60-63 is/are allowed.  
6) ☒ Claim(s) 1-4, 9, 11-12, 14-20, 28-35, 40-46, 53, 55, and 57-59 is/are rejected.  
7) ☒ Claim(s) 7, 8, 10, 13, 47-52, 54 and 56 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

Art Unit: 2143

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 9, 11-12, 14-20, 28-35, 40-46, 53, 55, and 57-59 are rejected under 35

U.S.C. 102(e) as being anticipated by Sistanizadeh et al. (US 6,681,232).

Sistanizadeh et al. teaches a system/method of measuring performance of streaming media over a network, comprising:

connecting a data acquisition agent (“The SLM 100 utilizes a distributed software system. The software analyzes data collected by various software Agents (SNMP Agents, Latency Measurement Agents, Utilization Agents, etc.”) to the network;

receiving a list of measurement targets, associated configuration parameters, and schedule at the data acquisition agent; (“The SLM 100 utilizes agents throughout the network to collect the necessary data regarding network operations. Examples of such agents include: SNMP Agents, RMON Agents, System Agents, Special Agents such as latency measurement agents, Enterprise Agents, Application Agents, and Network Agents”)

Art Unit: 2143

sending request for streaming media, based on the received list of measurement targets and schedule, from the data acquisition agent to a media source identified as one of the measurement targets connected to the network; (128)

receiving streaming media from the measurement target in response to the request for media at the data acquisition agent; (127)

monitoring the received streaming media; (43, 45, 63, 65)

collecting performance measurements based on received streaming media; (37)

sending the collected performance measurements to a data collection server configured for collecting and storing data received from a plurality of data acquisition agents; (“The inter-regional latency measurements indicate the performance of the Internet 87. The carrier operating the regional networks 90 can use this information to verify that its Internet service providers (ISP) are in fact delivering service in accord with the parameters of the service level agreements that the carrier negotiated with its ISPs.”)

wherein receiving streaming media comprises receiving streaming audio; (VoIP)

wherein receiving streaming media comprises receiving streaming video (Video streaming and broadcasting)

wherein the network is the Internet (Internet 87);

wherein each of the data acquisition agents include an internal clock coordinated with the other data acquisition agents clocks; (it is inherent that all data acquisition agents via cpu clock to coordinate with the other data acquisition agents)

sending schedule information includes palyback time (“The operations support systems for the network use multiple processes to ensure performance in accord with the service level

Art Unit: 2143

agreements (SLAs), which the carrier executes, both with its customers and with its upstream Internet service providers (ISPs). These processes include continuous testing and verification of network latency, continuous monitoring of network traffic and network status, and a Customer Experience Center with a web interface to facilitate communications between customers and various technical levels, on a 24.times.7 basis.”); and

wherein connecting a data acquisition agent to the network comprises utilizing a connection other than a dial-up connection (37, 39);

#### *Allowable Subject Matter*

3. Claims 21-27, 36-39, and 60-63 are allowed.
4. Claims 7-8, 10, 13, 54, 56 and 47-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

5. Applicant's arguments with respect to claims 1-4, 9, 11-12, 14-20, 28-35, 44-46, 53, 55, and 57-59 have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2143

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey C. Pwu whose telephone number is 571-272-6798. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**JEFFREY PWU**  
**PRIMARY EXAMINER**